

**FILED**

Apr 28 2021

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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Attorneys for Plaintiff EMERGENT BIOSOLUTIONS INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EMERGENT BIOSOLUTIONS INC.

Plaintiff,

v.

vs.

MUTUAL HOLISTIC, INC., JOHN  
DOES 1 THROUGH 50, and JOHN DOE  
ENTITIES 1 THROUGH 10,

Defendants.

Case No. 5:20-cv-09452-NC

**STIPULATED REQUEST FOR ENTRY OF  
CONSENT DECREE AND DISMISSAL;  
ORDER**

Judge: Hon. Nathanael M. Cousins  
Complaint Filed: December 30, 2020

1 The following Consent Decree is entered by and between Plaintiff Emergent BioSolutions  
 2 Inc. ("Emergent" or "Plaintiff"), Defendant Mutual Holistic, Inc. ("Mutual Holistic"), and Mutual  
 3 Holistic's officer Brad Moore ("Moore," and collectively with Mutual Holistic, "Defendants"),  
 4 having agreed upon a basis for settlement of the matters in dispute and having agreed upon the  
 5 entry of this Consent Decree, it is hereby ordered, adjudged, and decreed as follows, and the  
 6 Court makes the following findings of fact and conclusion of law:

7 1. This Court has jurisdiction over the subject matter of this action and over the  
 8 parties hereto.

9 2. Venue properly lies in this District.

10 3. Emergent is a Delaware corporation with a principal place of business in  
 11 Gaithersburg, Maryland.

12 4. Mutual Holistic is a non-profit mutual benefit corporation organized under the  
 13 laws of California with a principal place of business in Sebastopol, California.

14 5. Moore is an individual with an address c/o Attorney Richard Freeman, 703 2<sup>nd</sup>  
 15 Street, Suite 350, Santa Rosa, CA 95404.

16 6. Emergent has for many years used the trademarks and service marks EMERGENT  
 17 and EMERGENT BIOSOLUTIONS, alone and in connection with other words and designs (the  
 18 "EMERGENT Marks"), in connection with various goods and services, including  
 19 biopharmaceutical related products and services.

20 7. In addition to its common law rights, Emergent is the owner of numerous federal  
 21 trademark and service mark registrations and applications for the EMERGENT Marks, including  
 22 but not limited to, Reg. Nos. 3,934,662; 4,020,248; 3,446,708; 5,129,287; 5,211,622; and App.  
 23 Serial No. 88/884,324.

24 8. Mutual Holistic and Moore have promoted their herbal medicine products and  
 25 services, including Respiratory Immune Syrups, under the name and mark EMERGENT  
 26 BOTANICALS, without any authorization or consent from Emergent. The EMERGENT Marks  
 27 are valid, subsisting and in full force and effect as to Defendants.  
 28

9. Defendants' use of the name and mark EMERGENT BOTANICALS in connection with herbal medicine products and services is likely to cause confusion, or to cause mistake, or to deceive the relevant public and the trade, such that the relevant public and the trade are likely to believe that Defendants and their goods and services originate with or are related to Emergent.

10. Defendants and any of their officers, agents, servants, employees, attorneys, successors, related companies and assigns and their business or businesses, and all those in active concert or participation with them, are hereby permanently enjoined from using the name and mark EMERGENT BOTANICALS, any mark incorporating the term EMERGENT, or any other mark confusingly similar to the EMERGENT Marks, in connection with the provision of goods and services.

11. Each party shall bear its own attorney's fees and costs incurred in connection with this action and all rights of appeal are waived.

12. This Consent Decree may be executed in any number of counterparts, all of which together shall constitute one original document. Electronic copies of original signatures shall be deemed to be originally executed counterparts of this Consent Decree.

13. Subject only to the express restrictions contained in this Consent Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to the benefit of and shall be binding upon Plaintiff and Defendants and their successors and assigns.

14. Plaintiff and Defendants have negotiated this Consent Decree, and agree that it shall not be construed against the party preparing it, but shall be construed as if the parties jointly prepared this [Proposed] Consent Decree and any uncertainty and ambiguity shall not be interpreted against any one party.

15. Each signatory of this Consent Decree signing on behalf of another, warrants that he or she has the authority to sign on behalf of said person or entity and all persons

covered by this Consent Decree, and is fully authorized by the party whom he or she represents to enter into the terms and conditions of this [Proposed] Consent Decree.

16. This Court shall retain jurisdiction over this matter for purposes of enforcing the provisions of this Consent Decree, including over any claim that the Defendants have violated any term of this Consent Decree.

17. Emergent and Defendants hereby respectfully request that this Court promptly approve and enter this Consent Decree. If this [Consent Decree is not approved by the Court, it shall be of no force and effect, and it may not be used in any proceeding for any purpose.

**IT IS SO AGREED AND STIPULATED.**

Dated: March \_\_\_, 2021

EMERGENT BIOSOLUTIONS, INC.

By: J. Fox  
 Name: Jennifer Fox  
 Title: SVP and Deputy General Counsel

Electronically signed by: Jennifer Fox  
 Reason: I approve this document  
 Date: Apr 24, 2021 16:37 EDT

Dated: April 8, 2021

MUTUAL HOLISTIC INC.

By: [Signature]  
 Name: [Signature]  
 Title: [Signature]

Dated: April 8, 2021

[Signature]  
 Brad Moore

**APPROVED AS TO FORM:**

Dated: April 26, 2021

CROWELL & MORING LLP

By: [Signature]  
 Molly A. Jones  
 Valerie M. Good

Attorneys for Plaintiff  
 EMERGENT BIOSOLUTIONS INC.

1 Dated: April 21, 2021

THE LAW OFFICES OF RICHARD  
FREEMAN

By: [Signature]  
Richard Freeman

Specially appearing on behalf of  
Defendants  
MUTUAL HOLISTIC, INC. and BRAD  
MOORE

7 **FILER'S ATTESTATION**

8 Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that the other above-  
9 named signatories concur in this filing.

10  
11 Dated: April 26, 2021

By: [Signature]  
Molly A. Jones

13 **ORDER**

14 IT IS HEREBY ORDERED that the foregoing Consent Decree is fully  
15 incorporated herein by reference and is entered as an Order of the Court.

16 IT IS FURTHER ORDERED that the Court shall retain jurisdiction over the Parties for the  
17 sole purpose of enforcing compliance by the Plaintiff and Defendant with the terms of the Consent  
18 Decree.

19 IT IS FURTHER ORDERED that upon approval and entry of this Consent Decree by the  
20 Court, this Consent Decree shall constitute a final judgment between Emergent and the Defendants.  
21 The above-captioned action against Defendants is dismissed with prejudice and all calendared dates  
22 are hereby vacated.

23 **IT IS SO ORDERED.**

24  
25  
26 Dated: April 28, 2021

